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OGC 76-5544
6 October 1976

OGC Has Reviewed

MEMORANDUM FOR: Director of Personnel

FROM : [REDACTED]
Associate General Counsel

SUBJECT : Pay Rates for Senior Agency Personnel

1. The recent Presidential and congressional actions concerning compensation for senior level Government employees have posed questions as to the appropriate pay rates for certain senior CIA personnel. Specifically, it is necessary to determine rates of pay for the Agency employees who are paid at Executive Level Schedule rates and those Agency employees whose pay rates have been limited by the so-called Asterisk Statute, that is 5 U.S.C. 5308, which provides that employees in General Schedule positions may not be paid "at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

2. The positions of Director and Deputy Director of Central Intelligence are designated by statute (Federal Executive Salary Act of 1964, 5 U.S.C. 5313, 5314) as positions in levels II and III of the Executive Schedule. Certain other Agency positions are designated as positions to be compensated "at the rates established for Levels IV and V of the Federal Executive Salary Schedule"; this designation was made in a 1964 memorandum by the Director, [REDACTED] STATOTHR
[REDACTED] The Agency's General Schedule positions are not established or authorized by the Classification Act of 1949, which is the authority for such positions elsewhere in the Government. Rather, the CIA General Schedule positions and pay rates are also set by a memorandum by the Director, in 1962, also under the authority of the CIA Act. STATOTHR

3. Prior to 1975 the rates of compensation for positions established by the Federal Executive Salary Act - as to CIA, only the Director and Deputy Director - were set under the procedures of the Federal Salary Act of 1967, namely, salary recommendations by the President which would become the rates of pay in the absence of veto by either House of Congress. Under the

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provisions of the Executive Salary Cost-of-Living Adjustment Act, in August 1975, Executive Level positions are also to receive the cost of living salary adjustments granted General Schedule positions in the future. It was pursuant to that Act that Executive Levels II and III were increased to \$44,600 and \$42,000 in October 1975. Under the authority of that Act, the President also has set the compensation rates for those positions at \$46,800 and \$44,000 (Executive Order 11941, October 1, 1976), effective with the first pay period beginning on or after October 1, 1976. However, the Legislative Branch Appropriation Act, 1977, provides: "No part of the funds appropriated in this Act or any other Act shall be used to pay the salary of an individual in a [Statutory Executive Level position] . . . at a rate which exceeds the salary rate in effect on September 30, 1976, for such position or office. . . ." It follows that compensation for the positions of Director and Deputy Director must remain at the rates in effect on September 30, 1976, namely \$44,600 and \$42,000. (In a letter opinion to the Chairman of the House Committee on Post Office and Civil Service, September 21, 1976, concerning other questions arising under the limitations in the Legislative Branch Appropriation Act, 1977, the Comptroller General somewhat parenthetically reached the same conclusion. He noted the Chairman's statement that "he had no question as to the application of the limitation to positions under the [statutory] Executive Schedule.")

4. In the same letter, the Comptroller General also ruled that the limitations in the 1977 Legislative Branch Appropriation Act are not applicable also to "employees authorized to receive 'a rate equal to a rate for a particular level of the Executive Schedule,'" since the limitation in the Legislative Branch Appropriation Act refers to statutory Executive Schedule positions and not to positions which are to be compensated at rates equivalent to the rates set for such statutory positions. He noted also that the 1977 limitation is a limitation on the use of funds and not a veto of rates proposed by the President. Since the Executive Order of October 1, 1976, set pay rates for statutory Executive Level positions higher than those prevailing before that date and since the Director's 1964 memorandum sets the pay rates for the Executive Level positions designated by that memorandum at "the rates established for Levels IV and V of the" statutory Executive Level Schedule, including future adjustments to those rates, the non-statutory Executive Level positions of the Agency, in levels IV and V, are to be compensated at the rates set by Executive Order 11941, namely, \$41,800 and \$39,600.

5. For essentially the same reasons, the Agency's GS positions, including those frozen by the Asterisk Statute, are to be compensated at the rates set by Executive Order 11941. The Comptroller General so held with respect to General Schedule positions established by or pursuant to the Classification Act of 1949, an Act from which CIA is exempt.

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This action, a Director memorandum of 1962, adopted those pay rates prospectively also, i.e., future adjustments to the compensation rates of GS positions under the Classification Act would apply also to the Agency's GS positions. Thus the 1977 Act limitation on the use of funds is inapplicable to the Agency's GS positions and those positions also are to be compensated at the rates set by E.O. 11941.

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